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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~75~~ 334

ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, AND MORRIS HANSEN, APPELLANTS,

vs.

THE UNITED STATES AND BARRY BALDWIN, INDIVIDUALLY AND AS MARSHAL OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 11, 1895.

(16,015.)

(16,015.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 725.

ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, AND MORRIS HANSEN, APPELLANTS,

vs.

THE UNITED STATES AND BARRY BALDWIN, INDIVIDUALLY AND AS MARSHAL OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1895.

1 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

UNITED STATES OF AMERICA, *ss*:

To the United States of America and Barry Baldwin, individually and as the marshal of the United States in and for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washington, in the District of Columbia, on Monday, the 14th day of October, 1895, pursuant to an appeal taken, allowed, and filed in the office of the clerk of the district court of the United States in and for the northern district of California, wherein Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen are appellants and The United States of America and Barry Baldwin, individually and as marshal of the United States in and for the northern district of California, are respondents, to show cause, if any there be, why the order and judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated San Francisco, California, August 5, 1895.

WM. W. MORROW,
U. S. District Judge.

2 [Endorsed:] No. 11186. In the district court of the United States, northern district of California. In the matter of the application of Robert Robertson *et al.* for a writ of *habeas corpus*. Citation on appeal. Due service of the within paper admitted by copy this 5th day of August, 1895. Henry L. Foote, U. S. attorney. Barry Baldwin, individually and as U. S. marshal for the northern district of California. Filed August 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk. H. W. Hutton, att'y for petitioner.

3 In the Supreme Court of the United States.

In the Matter of the Application of ROBERT ROBERTSSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN, Appellants and Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA and BARRY BALDWIN, Individually and as the Marshal of the United States in and for the Northern District of California, Respondents and Defendants in Error.

To the honorable the Supreme Court of the United States:

The said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen complain of and assign the following errors, viz:

1st. The court should have discharged the petitioners, as they were held to slavery and involuntary servitude upon the barkentine Arago, contrary to the provisions of section 1, article XIII, of the amendments to the Constitution of the United States.

2nd. The court should have discharged the petitioners, as they and each of them were deprived of their liberty upon the barkentine Arago without due process of law, contrary to the provisions of article V of the amendments to the Constitution of the United States of America.

3rd. The court should have discharged the petitioners because they and each of them were conveyed on board the barken-
4 tine Arago in irons by force and against their will by the marshal of the United States for the State of Oregon, under the provisions of sections 4598 and 4599 of the Revised Statutes of the United States, and that the said sections are unreasonable, oppressive, arbitrary, and void in this, that the said sections and more particularly section 4598 above named is an attempt on the part of Congress to confer judicial powers upon a State officer contrary to the provisions of section 1 of article III of the Constitution of the United States of America.

4th. That said section 4598 of the Revised Statutes of the United States is further contrary to the provisions of article VI of the amendments to the Consti-tution of the United States in this, that *that* said section deprives a person proceeded against thereunder of the right to a trial by jury, deprives him of the right to be informed of the nature and cause of the accusation against him, and further deprives him of the right of compulsory process for obtaining witnesses in his favor.

5th. That said section 4598 of the Revised Statutes of the United States is arbitrary, unreasonable, and oppressive in this, that it provides for the imprisonment of persons proceeded against thereunder at the will of another person without any limit of time, and further provides for the forfeiture of property without due process of law, contrary to the provisions of article V of the amendments

to the Constitution of the United States ans article VIII of the said amendments to the Constitution of the United States.

6th. That section 4599 of the Revised Statutes of the United States is contrary to the provisions of article V of the amendments to the Constitution of the United States in this, that it provides for the deprivation of liberty without due process of law.

5 7th. That section 4599 of the Revised Statutes of the United States is contrary to the provisions of section 1 of article III of the Constitution of the United States of America in this, that there is an attempt therein on the part of Congress to confer judicial powers upon a State officer and upon a court not created by Congress.

8th. That section 4599 of the Revised Statuyes of the United States is further contrary to the provisions of section — of article XIII of the Constitution of the United States in this, that the said section provides a method of enforcing slavery and involuntary servitude.

9th. That section 4599 of the Revised Statutes of the United States is further contrary to the provisions of article IV of the amendments to the Constitution of the United States in this, that it provides for the arrest of persons without warrant, and renders their persons insecure.

10. The court should have discharged the petitioners by reason of all and each of the foregoing objections to sections 4598 and 4599 of the Revised Statutes of the United States, they and each of them being unlawfully deprived of their liberty upon the barkentine Arago under the provisions and operations of the said sections.

11th. The court should have discharged the petitioners, as, notwithstad*n*ing they may have signed a contract to perform services at a previous date, to compel services thereunder would be in violation of section 1 of article XIII of the amendments to the Constitution of the United States.

12th. The court should have discharged the petitioners, notwithstanding they may have previously signed a contract to serve, as section 1 of article XIII of the amendments to the Constitu-

6 tion of the United States gave them the right to leave such service at any time, and in so far as the first subdivision of section 4596 of the Revised Statutes of the United States attempts to prohibit that right by imposing criminal prosecution and imprisonment the same is contrary to the provisions of said section 1 of article XIII of said amendments and void.

13th. The court should have discharged the petitioners as being on board the barkentine Arago against their will, and having been placed there in violation of the foregoing provisions of the United States Constitution and the amendments thereto, and their constitutional rights being to that extent invaded, they could not be held to service thereon or to the performance of any duty.

Therefore the judgment should have been for the discharge of the appellants.

Wherefore appellants pray that the decision complained of be

reversed, and that they have such relief as may be proper in the premises.

JAMES G. MAGUIRE,
Attorney for Appellants.

H. W. HUTTON, *Of Counsel.*

7 [Endorsed:] Supreme Court of the United States. In the matter of the application of Robert Robertson *et al.* for a writ of *habeas corpus*. Robert Robertson *et al.*, appellants and plaintiffs in error, *vs.* The United States of America and Barry Baldwin, individually and as marshal of the United States in and for the northern district of California, respondents and defendants in error. Assignment of errors. Due service of the within paper admitted this 5th day of August, 1895. Henry S. Foote, U. S. att'y. Filed Aug'st 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk. Jas. G. Maguire, att'y for petitioners and appellants.

8 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

To the Honorable William W. Morrow, judge of the district court of the United States in and for the northern district of California:

The petition of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, of said district, made on their behalf by Andrew Furuseth, also of said district, respectfully shows—

That the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen are unlawfully imprisoned, detained, confined, and restrained of their liberty by Barry Baldwin, Esquire, United States marshal for the northern district of California, at the county jail, in the county of Alameda, in the State of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and that the illegality thereof consists in this, to wit:

That the said Robert Robertson, P. H. Olsen, John Bradley, and Mor-is Hansen are held by the said marshal by virtue of an order of commit*t*ment made on the 11th day of July, 1895, by Edwin H. Heacock, Esquire, commissioner of this honorable court, which said order of commit*t*ment committed them for trial before the

9 district court of the United States in and for the northern district of California on a charge of disobedience of lawful orders of the master of the American barkentine Arago.

That the said commit*t*ment was made without reasonable or probable cause in this, that at the time of the commission of the said alleged offense your petitioners were held on board the said American barkentine Arago by one —— ——, the master thereof, against their will and by force, having been theretofore placed on

board of said vessel against their will by the United States marshal for the district of Oregon and under the provisions of the first subdivision of section 4596 of the Revised Statutes of the United States and sections 4598 and 4599 of the said Revised Statutes of the United States, the said master claiming the right to hold your petitioners on board the said vessel and compel them to work as seamen under and by virtue of the provisions of the foregoing subdivisions of the said sections 4596 and the said sections 4598 and 4599 of the said Revised Statutes of the United States.

That sections 4598 and 4599 of the said Revised Statutes of the United States and each of them and each and every of their provisions are unconstitutional and void and violate the provisions of section 1 of article three of the Constitution of the United States and of article V of the amendments to the Constitution of the United States.

That section 4598 of the said Revised Statutes of the United States was further repealed by Congress on the 17th day of June, 1872, and has no existence as a law.

That the first subdivision of section 4596 of the Revised
10 Statutes of the United States is violative of the provisions of the 13 amendment of the Constitution of the United States, in that it compels involuntary servitude.

Wherefore your petitioners pray that a writ of *habeas corpus* may be granted, directed to the said Barry Baldwin, marshal as aforesaid, commanding him to have the bodies of said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, together with the time and cause of his detention and said writ, and that they, said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, may be restored to their liberty.

Dated July —, 1895.

ANDREW FURUSETH,
On Behalf of said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen.

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

Andrew Furuseth, being first duly sworn, deposes and says as follows: That he is a male citizen of the United States, over the age of twenty-one years, and a friend of the above-named Robertson, P. H. Olsen, John Bradley, and Morris Hansen, and makes this verification and signs the above petition on their behalf; that he has heard read the foregoing petition and knows the contents thereof, and the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

ANDREW FURUSETH.

Subscribed and sworn to before me this 18th day of July, 1895.

[SEAL.] RAYMOND HOLMES,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed July 23rd, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus.*

Upon reading and filing the petition of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, signed and verified on their behalf by Andrew Furuseth, whereby it appears that the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen are illegally imprisoned and restrained of their liberty by Barry Baldwin, United States marshal, at the county jail in the county of Alameda, State of California, and stating wherein the illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue out of and under the seal of the district court of the United States in and for the northern district of California, directed to the said Barry Baldwin, marshal as aforesaid, commanding him to have the bodies of the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen before me, in the court-room of the said court, in the city and county of San Francisco, State of California, on the 25th day of July, 1895, at eleven o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Robert Robertson, P. H. Hansen, John Bradley, and Morris Hansen, together with the time and cause of his detention, and that he have then and there the said writ.

Dated July 23rd, 1895.

WM. W. MORROW, *Judge.*

M. B. Woodworth, a disinterested person, is hereby appointed to serve the said writ of *habeas corpus* on *the* Barry Baldwin,
Esquire, the United States marshal.

Dated July 23rd, 1895.

WM. W. MORROW, *Judge.*

(Endorsed:) Filed July 23rd, 1895. Southard Hoffman, clerk.

14 In the District Court of the United States, Northern District of California.

In the Matter of the Petition of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN on *Habeas Corpus*. No. 11186.

The President of the United States of America to Barry Baldwin, U. S. marshal, northern district of California, Greeting:

You are hereby commanded that you have the body of the said person- by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name- the said person- shall be called or charged, before the Honorable Wm. W. Morrow, judge of the district court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 25th day of July, 1895, at 11 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Wm. W. Morrow, judge of the said district court, and the seal thereof, at San Francisco, in said [SEAL.] district, on the 23rd day of July, A. D. 1895.

SOUTHARD HOFFMAN,
Clerk of said District Court,
By J. S. MANLEY, *Deputy Clerk.*

15 *United States Marshal's Return.*

In obedience to the within writ I hereby produce the bodies of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hanson before this honorable court, as directed in the within writ, and return that I hold the said persons in my custody under and by virtue of a warrant of commitment issued by E. H. Heacock, Esquire, commissioner United States circuit court for the northern district of California, on the 11th day of July, 1895, a copy of which is hereto annexed and made a part of this return, the original being on file with the clerk of the United States district court for said northern district of California.

BARRY BALDWIN,
United States Marshal,
By H. M. MOFFITT, *Deputy.*

Dated San Francisco, Cal., this 25th day of July, A. D. 1895.

16 (Copy.)

UNITED STATES OF AMERICA,
Northern District of California, City and County of San Francisco, } *ss:*

The President of the United States of America to the marshal of the United States for the northern district of California:

And order having been this day made by me that Robert Robertson, P. H. Olsen, John Bradley, and Morris Hanson be held to

answer upon a charge of willful disobedience of the lawful command of the master of the American barkentine "Arago," the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hanson then and there being seaman who had been lawfully engaged as such seaman on board of the said barkentine "Arago," committed on board of said barkentine "Arago" while on the high seas on the 30th day of June, 1895, you are therefore commanded to receive them into your custody and detain them until they are legally discharged.

Dated this 11th day of July, A. D. 1895.

E. H. HEACOCK,
Commissioner U. S. Circuit Court,
Northern District of California.

The within warrant of commitment was received by me on the 11th day of July, 1895, and is returned executed this 11th day of July, 1895, by placing the within-named defendants, Robert Robertson, P. H. Olsen, John Bradley, and Morris Hanson, in the San Francisco county jail.

BARRY BALDWIN,
United States Marshal.
MARSHAL C. HARRIS, *Deputy.*

Dated this 11th day of July, 1895.

(Endorsed:) Filed on return this 25th day of July, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

17 In the District Court of the United States, Northern District of California.

In the Matter of the Petition of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN on *Habeas Corpus*. No. 11186.

The President of the United States of America to Barry Baldwin, U. S. marshal, northern district of California, Greeting:

You are hereby commanded that you have the body of the said person- by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name- the said person- shall be called or charged, before the Honorable Wm. W. Morrow, judge of the district court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on the 25th day of July, 1895, at 11 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Wm. W. Morrow, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 23rd day of July, A. D. 1895.

[SEAL.] SOUTHARD HOFFMAN,
Clerk of said District Court,
By J. S. MANLEY, *Deputy Clerk.*

18 I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a copy of the writ of *habeas corpus* issued in the within-entitled matter.

Attest my hand and seal of said district court this 23rd day of July, A. D. 1895.

SOUTHARD HOFFMAN, *Clerk*,
By J. S. MANLEY, *Deputy Clerk*.

I hereby certify that on the 23rd day of July, 1895, I received the writ of which the within is a copy, and that on the 23rd day of July, 1895, at San Francisco, Cal., in this district, I personally served the said writ by delivering to and leaving the same with Barry Baldwin, U. S. marshal for the northern district of California.

Dated San Francisco, Cal., July 23rd, 1895.

MARSHALL B. WOODWORTH,
U. S. Marshal, Appointed to Serve said Writ of Habeas Corpus by Order of U. S. District Judge of July 23rd, 1895.

19 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

The petitioners, Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, answering the respondent's return herein, aver that said petitioners were held for trial before the above-named honorable court without reasonable or probable cause, and said petitioners refer for proof of said facts to their said petition on file herein and to the testimony and proof produced on the hearing hereof, which are made a part hereof.

H. W. HUTTON,
Attorney for Petitioners.

(Endorsed:) Filed July 25th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

19½ At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 25th day of July, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable Wm. W. Morrow, judge.

In Re ROBERT ROBERTSON & 3 Others on *Habeas Corpus*. No. 11186.

In this matter the U. S. marshal this day made due return to the writ of *habeas corpus* issued herein and produced the bodies of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen in open court. H. W. Hutton, Esq., attorney for the petitioner-,

filed an answer and traverse to the return of said writ; and thereupon the matter came on for hearing upon the issues joined herein, H. W. Hutton, Esq., appearing on behalf of the petitioner- and H. S. Foote, Esq., and Bert Schlesinger, Esq., assistant U. S. attorney, appearing on behalf of the respondent, Barry Baldwin, U. S. marshal. Mr. Hutton called E. H. Heacock, who was duly sworn and examined as a witness on behalf of the petitioner- and rested. No testimony was offered on behalf of the respondent. The matter was then argued by Mr. Hutton and Mr. Foote and submitted to the court for consideration and decision.

20 In the District Court of the United States in and for the Northern District of California.

Hon. W. W. Morrow, judge.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

THURSDAY, *July 25th*, 1895.

Appearances.

W. H. Hutton, Esq., appeared for the petitioners; United States Attorney H. S. Foote and United States Assistant Attorney Bert Schlesinger appeared for the United States.

E. H. HEACOCK called and sworn:

Mr. HUTTON: The official capacity of Mr. Heacock is admitted by both parties, and also that these petitioners were examined before him on the 10th day of July, 1895, and held to answer before this court in the proceedings which this writ of *habeas corpus* attacks.

Q. I will ask you, Mr. Heacock, did you keep any record of the testimony given upon the hearing of these four persons?

A. No, sir; I did not keep any record. I always in such matters make a memorandum for my own use, which I retain until I shall have decided the case, to refresh my memory, and the case having been decided, as I universally do, destroy them.

Q. Can you relate the testimony?

A. I think I can.

21 Q. Will you proceed to do so?

A. As I remember the testimony, taken as a whole, it was to the effect that the four parties, the defendants in that case and now at bar in this court, had shipped on board the American barkentine the "Arago" on a voyage to a foreign port by the way of Astoria or some other place. I am not certain of the place.

Q. I will call your attention to that document and ask if that was introduced in evidence.

A. My memory is that it was. The shipping articles——

The COURT:

Q. You say these men were shipped at Astoria?
A. No, sir; at San Francisco.

Mr. HUTTON: I offer in evidence the shipping articles signed by these men, showing they were shipped at San Francisco for a voyage to Knappton, State of Washington, and thence to Valparaiso and thence to such other foreign ports as the master may direct, and return to a port of discharge in the United States.

A. (Continuing:) That the four defendants deserted the ship at Astoria, as I remember correctly, were arrested by process of law issued by a justice of the peace at that place, and were committed by such magistrate to await the time when the ship should leave that port; that at the time just previous to her leaving they were taken by the United States marshal there on board the vessel——

Q. (Interrupting.) In what manner?

A. In irons, as I remember; that when the ship was ready to sail one of the officers of the ship asked them to assist in hoisting the anchor, which they refused to do. The ship departed from the port, and while upon the high seas the men were ordered to turn to, as I remember, and they refused to do so, and I held them
22 to answer for trial before this court for such refusal.

Q. Were sections 4598 and 4599 considered by you in your opinion as to whether you should hold them or not?

A. I do not remember the sections by numbers.

Q. I will read the sections to you. Section 4598 is as follows:

"If any seaman who shall have signed a contract to perform a voyage shall, at any port or place, desert, or shall absent himself from such vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States, upon the complaint of the master, to issue his warrant to apprehend such deserter, and bring him before such justice; and if it then appears that he has signed a contract within the intent and meaning of this title, and the voyage agreed for is not finished, or altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the justice shall commit him to the house of correction or common jail of the city, town, or place, to remain there until the vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman."

A. The point was raised by Mr. Hutton, counsel for defendant, that this act was unconstitutional, and I think I stated in substance that as I was simply acting as a committing magistrate, and as I did not deem it proper, acting in such capacity, to declare an act of Congress unconstitutional, that a question of such grave magnitude should be determined by courts of records, and therefore I did not consider the question whether it was unconstitutional or not.

23 Q. I did not ask you whether you considered it unconstitutional or constitutional, but whether you considered that section at all in deciding the case.

A. That is not the particular section under which I held the defendants to answer.

Q. I will read the other section. It is as follows:

"SECTION 4599. Whenever, either at the commencement of or during any voyage, any seaman or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in, any vessel, in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master, or any mate, or the owner, or consignee, or shipping commissioner, may, in any place in the United States, with or without the assistance of the local public officers or constables, who are hereby directed to give their assistance if required, and also at any place out of the United States, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may thereupon, in any place, and shall in case he so requires and it is practicable, convey him before any court of justice or magistrate of any State, city, town, or county, within the United States, authorized to take cognizance of offenses of like degree and kind, to be dealt with according to the provisions of law governing such cases; and may, for the purpose of conveying him before such court or magistrate, detain him in custody for a period not exceeding twenty-four hours, or may, if he does not so require, or if there is no such court at or near the place, at once convey him on board. If such apprehension appears to the court or magistrate before whom the case is brought to be made on improper or on insufficient grounds

24 the master, mate, consignee, or shipping commissioner who makes the same, or causes the same to be made, shall be liable to a penalty of not more than one hundred dollars; but such penalty, if inflicted, shall be a bar to any action for false imprisonment."

A. It is not that section. Section 4596 was the section upon which I held the defendants to answer.

Q. What I desire to know is, was it not contended by myself and did not the testimony show they were placed on board the ship against their will?

A. Yes, sir.

Q. And did I not make the further contention that they, being placed on board the ship against their will, were strangers and were not obliged to obey orders?

A. That was your contention.

Q. Did I not call your attention to the fact that the justice of the peace had no right to proceed as he did in this instance?

A. I do not remember. The section under which the prosecution was brought was 4596, and nothing else.

Q. Do you remember how many days these men were incarcerated by the justice of the peace?

A. I do not, as that was unimportant.

Q. Do you remember whether the testimony disclosed that it was

within the power of the captain to substitute other men in their places?

A. I remember it was your statement or some witness testified he could get other persons in lieu of these men at this port.

Q. Do you remember that the master did so testify?

A. That is my present remembrance. I did not charge
25 my mind with that, because that was not the offense for which these men were examined.

Mr. HUTTON: I suppose it is admitted that these men were placed in jail sixteen days awaiting the departure of the vessel?

Mr. FOOTE: I do not remember.

The WITNESS: May I read the portion of the section under which these parties were being prosecuted?

The COURT: You may read it.

Mr. FOOTE: I was going to ask you what——

A. (Interrupting.) It was section 4596, which appears upon the margin of the complaint, and subdivision four, referred to on the margin of that complaint—of that section—which are as follows:

"Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service, commits any of the following offenses, he shall be punished as follows."

Subdivision four is as follows:

And "for wilful disobedience to any lawful command, by imprisonment for not more than two months, and also, at the discretion of the court, by forfeiture out of his wages of not more than four days' pay."

That was the section and that was the subdivision under which these parties were prosecuted before me, and was the only section I seriously considered.

The COURT: The prosecution's contention was that they disobeyed the orders of the master upon the high seas?

A. Yes, sir.

26 Mr. HUTTON:

Q. Was it not shown that two of these prisoners were kept in irons?

A. There was testimony about some of the men being put in irons and brought into this port in irons. I did not charge my mind with that, either, because it was not material.

Q. Was it or not contended that the justice of the peace who acted in this matter acted upon the authority, if there was any, of section 4598 of the Revised Statutes—was not that the contention?

A. I think so.

Q. 4598 and 4599?

A. That is my remembrance. That was your contention.

Mr. FOOTE: As I understand, the sum and substance of your testimony is that these people were shipped at San Francisco for a voyage to Knappton, Washington, and thence to Valparaiso and such other foreign ports as the captain may direct; that they deserted the ship at Astoria, were arrested and again placed on board the ship, and that upon the high seas they committed an offense—that is,

they refused to obey the orders of the captain, and that they were brought to San Francisco and the voyage was not completed to the foreign port?

A. Yes, sir.

Mr. HUTTON: Will counsel admit that the minutes were made in the log book?

Mr. HUTTON: I do not admit that.

Mr. FOOTE:

Q. Just kindly state what was in the log book.

The COURT:

Q. Was the log book introduced in evidence?

27 A. Yes, sir.

Mr. HUTTON: My contention is that, the men having left the ship, there was no power in the United States to put them on board again.

Mr. FOOTE:

Q. What was the nature of these entries on July 30, 1895?

A. I do not remember sufficiently to state it. I remember that Mr. Hutton objected to the introduction of the log book in evidence for the reason that the entries were not in full, as the law required.

Mr. HUTTON: I move to strike out the answer on the ground that the log book is the best evidence.

The COURT: We are not enquiring what the log book shows, but what was before Judge Heacock. The motion to strike out is denied.

Mr. FOOTE:

Q. Was that entry in the log book read to the men according to the entries?

A. My remembrance is that the testimony showed it was.

Mr. HUTTON:

Q. Did not the testimony show that it was not read to all of them?

A. That I am unable to testify to, as I do not remember.

The COURT: The point is, what was presented to Judge Heacock?

A. The log book was introduced in evidence.

Q. You did overrule the objection?

A. Yes, sir.

28 Q. And the log book was introduced in evidence?

A. Yes, sir.

Counsel here proceeded to argue the matter.

(Endorsed:) Filed July 25th, 1895. Southard Hoffman, clerk.

29 At a stated term of the district court of the United States of America for the northern district of California, held at the

court-room, in the city of San Francisco, on Tuesday, the 30th day of July, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable Wm. W. Morrow, judge.

In the Matter of the Petition of ROBERT ROBERTSON *et al.* on *Habeas Corpus*. No. 11186.

This matter having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that the petition and writ herein be, and the same are hereby, dismissed; and further ordered that the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen be, and they are hereby, remanded to the custody whence produced; and to which orders the petitioners, by their attorney, then and there duly excepted.

30 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

This matter having been brought on for hearing before the court and the judge thereof upon the issues joined herein and the testimony taken in support thereof, and the same having been submitted after hearing H. W. Hutton, Esquire, the attorney for the petitioners, Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, in support of their application to be discharged from custody, the said petitioners having been produced before this court by Barry Baldwin, Esquire, the United States marshal, in obedience to the writ of *habeas corpus* issued herein, and after hearing H. S. Foote, Esquire, the United States attorney in and for the northern district of California, in opposition thereto and in support of an application to remand the said petitioners to the custody of the said Barry Baldwin, Esquire, the United States marshal for the said northern district of California, it is ordered that said writ of *habeas corpus* heretofore issued is the above-entitled matter on the 22nd day of July, 1895, directed to Barry Baldwin, the United States marshal in and for the northern district of California, and the same hereby is dismissed; and it is further ordered that said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen be, and they are hereby,
31 remanded to the custody of the said Barry Baldwin, the United States marshal in and for the northern district of California.

Dated August 5th, 1895.

WM. W. MORROW, *Judge*.

(Endorsed:) Filed August 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

they refused to obey the orders of the captain, and that they were brought to San Francisco and the voyage was not completed to the foreign port?

A. Yes, sir.

Mr. HUTTON: Will counsel admit that the minutes were made in the log book?

Mr. HUTTON: I do not admit that.

Mr. FOOTE:

Q. Just kindly state what was in the log book.

The COURT:

Q. Was the log book introduced in evidence?

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Mr. HUTTON: My contention is that, the men having left the ship, there was no power in the United States to put them on board again.

Mr. FOOTE:

Q. What was the nature of these entries on July 30, 1895?

A. I do not remember sufficiently to state it. I remember that Mr. Hutton objected to the introduction of the log book in evidence for the reason that the entries were not in full, as the law required.

Mr. HUTTON: I move to strike out the answer on the ground that the log book is the best evidence.

The COURT: We are not enquiring what the log book shows, but what was before Judge Heacock. The motion to strike out is denied.

Mr. FOOTE:

Q. Was that entry in the log book read to the men according to the entries?

A. My remembrance is that the testimony showed it was.

Mr. HUTTON:

Q. Did not the testimony show that it was not read to all of them?

A. That I am unable to testify to, as I do not remember.

The COURT: The point is, what was presented to Judge Heacock?

A. The log book was introduced in evidence.

Q. You did overrule the objection?

A. Yes, sir.

28 Q. And the log book was introduced in evidence?

A. Yes, sir.

Counsel here proceeded to argue the matter.

(Endorsed:) Filed July 25th, 1895. Southard Hoffman, clerk.

29 At a stated term of the district court of the United States of America for the northern district of California, held at the

court-room, in the city of San Francisco, on Tuesday, the 30th day of July, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable Wm. W. Morrow, judge.

In the Matter of the Petition of ROBERT ROBERTSON *et al.* on *Habeas Corpus*. No. 11186.

This matter having been heretofore submitted to the court for consideration and decision, now, after due consideration had thereon, it is by the court ordered that the petition and writ herein be, and the same are hereby, dismissed; and further ordered that the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen be, and they are hereby, remanded to the custody whence produced; and to which orders the petitioners, by their attorney, then and there duly excepted.

30 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

This matter having been brought on for hearing before the court and the judge thereof upon the issues joined herein and the testimony taken in support thereof, and the same having been submitted after hearing H. W. Hutton, Esquire, the attorney for the petitioners, Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, in support of their application to be discharged from custody, the said petitioners having been produced before this court by Barry Baldwin, Esquire, the United States marshal, in obedience to the writ of *habeas corpus* issued herein, and after hearing H. S. Foote, Esquire, the United States attorney in and for the northern district of California, in opposition thereto and in support of an application to remand the said petitioners to the custody of the said Barry Baldwin, Esquire, the United States marshal for the said northern district of California, it is ordered that said writ of *habeas corpus* heretofore issued is the above-entitled matter on the 22nd day of July, 1895, directed to Barry Baldwin, the United States marshal in and for the northern district of California, and the same hereby is dismissed; and it is further ordered that said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen be, and they are hereby,
31 remanded to the custody of the said Barry Baldwin, the United States marshal in and for the northern district of California.

Dated August 5th, 1895.

WM. W. MORROW, *Judge*.

(Endorsed:) Filed August 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

32 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, the petitioners in the above-entitled proceeding, feeling themselves aggrieved by the order heretofore entered herein and filed in the office of the clerk of the district court of the United States in and for the northern district of California on the 5th day of August, 1895, dismissing the writ of *habeas corpus* theretofore granted and remanding the said Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen to the custody of Barry Baldwin, the marshal of the United States in and for the northern district of California, do hereby appeal from the said order and judgment of the said district court of the 5th day of August, 1895, to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated August —, 1895.

H. W. HUTTON,
Attorney for Petitioners and Appellants.

606 Montgomery street, San Francisco, California.

33 And now, to wit, at this day, on motion of H. W. Hutton, Esquire, attorney for petitioners and appellants, it is ordered that an appeal to the Supreme Court of the United States from the order and judgment of the United States district court herein be, and the same is hereby, allowed, and that the said petitioners and appellants give a bond in the sum of two hundred dollars each, conditioned for their appearance and the appearance of each of them when required, and a bond in the sum of two hundred dollars jointly, conditioned for the payment of all costs and damages that may be recovered against them or either of them if they or either of them fail to make their appeal good.

Dated August 5th, 1895.

WM. W. MORROW, *Judge*.

(Endorsed:) Filed August 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

34 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN for a Writ of *Habeas Corpus*.

Upon all the papers and proceedings herein and in pursuance of the provisions of section 765 of the United States Revised Statutes

and upon motion of H. W. Hutton, Esquire, the attorney for the petitioners in the above-entitled proceeding, it is ordered that a transcript of the petition, writ of *habeas corpus*, return thereto, and all other proceedings herein and the testimony taken on the hearing be sent up to the United States Supreme Court by the clerk of this court on or before Monday, the 14th day of October, 1895, and that said day be, and the same hereby is, made the return day of the appeal heretofore allowed herein.

Dated August 5th, 1895.

WM. W. MORROW, *Judge.*

(Endorsed:) Filed August 5th, 1895. Southard Hoffman, clerk, by J. S. Manley, deputy clerk.

35 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of ROBERT ROBERTSON, P. H. OLSEN, JOHN BRADLEY, and MORRIS HANSEN on *Habeas Corpus.*

Know all men by these presents that we, —— Robertson, P. H. Olsen, John Bradley, and Morris Hansen, principals, and James H. Barry, residing at 2415 Sacramento street, in the city and county of San Francisco, State of California, and Edward Andersen, residing on Dwightway near Magee street, Berkeley, Alameda county, State of California, as sureties, are held and firmly bound unto the United States of America and Barry Baldwin, individually and as the marshal of the United States in and for the northern district of California, in the sum of two hundred dollars, to be paid by the said obligees; for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 5th day of August, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas the above-named Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen have presented an appeal to the Supreme Court of the United States to reverse the order and judgment dismissing the writ of *habeas corpus* herein heretofore made in the above-entitled proceeding on the 5th day of August, 1895, by the district court of the United States in and for the northern
36 district of California and duly entered on said day in the office of the clerk of said court:

Now, therefore, the condition of this obligation is such that if Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen shall prosecute said appeal to effect and answer all damage and costs if they fail to make their appeal good, then this obligation

shall be void; otherwise the same shall remain in full force *by* virtue.

ROBERT ROBERTSON.
P. H. OLSEN.
JOHN BRADLEY.
MORRIS HANSEN.
JAMES H. BERRY.
EDWARD ANDERSEN.

Sealed and delivered and taken and acknowledged this 5th day of August, 1895, before me—

JOHN FOUGA,
Commissioner U. S. Circuit Court,
Northern District of California.

UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

James H. Barry and Edward Andersen, being each duly sworn, for himself and not one for the other depose- and say- that he is worth the sum mentioned in the foregoing undertaking over and above his just debts and liabilities, exclusive of property exempt from execution.

JAMES H. BARRY.
EDWARD ANDERSEN.

Sworn to before me this 5th day of August, 1895, *ss.*

JOHN FOUGA,
Commissioner U. S. Circuit Court,
Northern District of California.

UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

On this 5th day of August, 1895, before me, personally came —— Robertson, P. H. Olsen, John Bradley and Morris Hansen, and James H. Barry and Edward Andersen, to me known and known to me to be the individuals mentioned and described in the foregoing instrument, and they severally acknowledged to me that — executed the same.

37

ROBERT ROBERTSON.
P. H. OLSEN.
JOHN BRADLEY.
MORRIS HANSEN.
JAMES H. BARRY.
EDWARD ANDERSEN.

JOHN FOUGA,
Commissioner U. S. Circuit Court,
Northern District of California.

Approved:
WM. W. MORROW,
United States District Judge,
Northern District of California.

(Endorsed:) Filed August 5th, 1895. Southard Hoffman, clerk.

38 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing and hereunto annexed 37 pages, numbered from one (1) to thirty-seven (37), inclusive, constitute the transcript on appeal from said district court to the Supreme Court of the United States in the matter of the application of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, No. 11186, on *habeas corpus*.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, in said district, this 26th day of August, A. D. 1895.

[Seal of the U. S. District Court, Northern Dist. of California.]

SOUTHARD HOFFMAN,
Clerk U. S. District Court, Northern District of California.

Endorsed on cover: Case No. 16,015. N. California D. C. U. S. Term No., 725. Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen, appellants, *vs.* The United States and Barry Baldwin, individually and as marshal of the United States in and for the northern district of California. Filed September 11th, 1895.

Office Supreme Court U. S.
FILED.
MAR 9 1896
JAMES H. McKENNEY,
CLERK.

165-275

In the Supreme Court of the United States

OCTOBER TERM, 1895.

No. 16,015. TERM NO. ~~722~~ 334.

ROBERT ROBERTSON ET AL.

vs.

THE UNITED STATES ET AL.

MOTION FOR APPELLANTS.

J. H. RALSTON,
For Appellants.

LAW REPORTER PRINT WASHINGTON D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1895.

No. 16,015. TERM No. 722.

ROBERT ROBERTSON ET AL.

vs.

THE UNITED STATES ET AL.

Now come the appellants, by Jackson H. Ralston, their attorney, and move this honorable court to advance the above entitled cause to a speedy hearing, and for cause say—

That petitioners on July 23, 1895, filed their petition for a writ of habeas corpus in the District Court of the United States for the Northern District of California, claiming that they were confined by the Marshal of the United States by virtue of an order of commitment made under circumstances involving a disregard of Section 1 of Article 3 of the United States Constitution and of Article 5 of the Amendments to the Constitution (Trans. fol. 9);

That upon the return of the writ issued under said petition, in further disregard of said constitutional provisions and of the XIIIth Amendment of the Constitution, petitioners were remanded to the custody of the United States Marshal to await trial, although the evidence before the District Court showed that petitioners were unjustly confined, they as seamen having been forcibly placed upon a vessel

and against their will carried to sea, the offense charged being that under such circumstances they had refused to work. (Trans. fols. 21, 22, 23, 24, 25, 26, 27, 28.)

That from the judgment of said District Court these petitioners obtained their writ of error to this court, as above entitled. That said petitioners have ever since and still are kept in close confinement by Barry Baldwin, Marshal of the United States in and for the Northern District of California, appellee herein, under the order of the said District Court awaiting the disposition of this appeal.

J. H. RALSTON,
For Appellants.

165-275

SUPREME COURT, U. S.
FILED
DEC 16 1896
JAMES H. McKENNEY,
CLERK.

165-275

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 334.

ROBERT ROBERTSON ET AL.

vs.

THE UNITED STATES AND HENRY BALDWIN, MARSHAL.

APPELLANTS' BRIEF.

JAMES G. MAGUIRE,
JACKSON H. RALSTON,
Petitioners' Attorneys.

H. W. HUTTON,
Of Counsel.

LAW REPORTER PRINT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 334.

ROBERT ROBERTSON ET AL.

vs.

THE UNITED STATES AND HENRY BALDWIN, MARSHAL.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the District Court of the United States in and for the Northern District of California, dismissing a habeas corpus proceeding.

The facts of the case are, that appellants shipped at San Francisco, California, to serve as seamen on board the American barkentine Arago, on a voyage from San Francisco to Knapton, in the State of Washington, thence to Valparaiso, and thence to such other foreign ports as the master might direct, and return to a port of discharge in the United States. (Pp. 10, 11, 13.)

Becoming dissatisfied with their employment, they left the vessel at Astoria, in the State of Oregon, and although other men could have been secured to take their places, they were subsequently arrested at Astoria under the provisions of Sections 4596–4599 of the Revised Statutes of the United States, taken before a justice of the peace,

and by him committed to jail until the Arago was ready for sea (some sixteen days), when they were taken from the jail by the United States marshal and placed on board the Arago, in irons, and against their will; they refused to turn to, and were subsequently arrested and charged with refusing to work, (Folios 8, 9, 10, 21 to 26) in violation of Sec. 4596, R. S. U. S.

They were subsequently and on the 10th day of July, 1895, examined before E. H. Heacock, Esquire, a Commissioner for the Circuit Court for the Northern District of California, and by him held to answer such charge before the United States District Court in and for the Northern District of California. (Folio 16.)

Subsequently and on the 23d day of July, 1895, a writ of habeas corpus issued from said District Court on their behalf, the petition alleging that appellants were held to answer without probable cause, having been placed on board the American barkentine Arago, against their will, and by force, and detained there in like manner by the master of said vessel, for the purpose of compelling them to work by force and against their will, under the supposed authority of Sections 4596, 4598 and 4599 of the Revised Statutes of the United States in violation of the provisions of Section 1, of Article 3 of the Constitution of the United States, and of Article V of the amendments to the Constitution of the United States, and of the 13th amendment to the Constitution of the United States. (Folios 8, 9.)

Hearing and argument was had, after which and on the 5th day of August, 1895, the said honorable court gave, made and entered its judgment dismissing the said writ (filing no opinion) upon which an appeal was taken to this honorable court. (Folios 20 to 37.)

ASSIGNMENT OF ERRORS.

1st. The court should have discharged the petitioners, as they were held to slavery and involuntary servitude upon the barkentine Arago, contrary to the provisions of Section 1, Article XIII, of the amendments to the Constitution of the United States.

2d. The court should have discharged the petitioners, as they and each of them were deprived of their liberty upon the barkentine Arago without due process of law, contrary to the provisions of Article V of the amendments to the Constitution of the United States of America.

3d. The court should have discharged the petitioners because they and each of them were conveyed on board the barkentine Arago, in irons, by force, and against their will, by the marshal of the United States for the State of Oregon, under the provisions of Sections 4598 and 4599 of the Revised Statutes of the United States, and that the said sections are unreasonable, oppressive, arbitrary and void in this, that the said sections, and more particularly Section 4598, above named, is an attempt on the part of Congress to confer judicial powers upon a State officer, contrary to the provisions of Section 1 of Article III of the Constitution of the United States of America.

4th. That said Section 4598 of the Revised Statutes of the United States is further contrary to the provisions of Article VI of the amendments to the Constitution of the United States in this, that said section deprives a person proceeded against thereunder of the right to a trial by jury, deprives him of the right to be informed of the nature and cause of the accusation against him, and further deprives him of the right of compulsory process for obtaining witnesses in his favor.

5th. That said Section 4598 of the Revised Statutes of the United States is arbitrary, unreasonable, and oppressive in this, that it provides for the imprisonment of persons proceeded against thereunder at the will of another person,

without any limit of time, and further provides for the forfeiture of property without due process of law, contrary to the provisions of Article V of the amendments to the Constitution of the United States, and Article VIII of the said amendments to the Constitution of the United States.

6th. That Section 4599 of the Revised Statutes of the United States is contrary to the provisions of Article V of the amendments to the Constitution of the United States in this, that it provides for the deprivation of liberty without due process of law.

7th. That Section 4599 of the Revised Statutes of the United States is contrary to the provisions of Section 1 of Article III of the Constitution of the United States of America in this, that there is an attempt therein on the part of Congress to confer judicial powers upon a State officer and upon a court not created by Congress.

8th. That Section 4599 of the Revised Statutes of United States is further contrary to the provisions of Section 1, of Article XIII of the Constitution of the United States in this, that the said section provides a method of enforcing slavery and involuntary servitude.

9th. That Section 4599 of the Revised Statutes of the United States is further contrary to the provisions of Article IV of the amendments to the Constitution of the United States in this, that it provides for the arrest of persons without warrant, and renders their persons insecure.

10th. The court should have discharged the petitioners by reason of all and each of the foregoing objections to Sections 4598 and 4599 of the Revised Statutes of the United States, they and each of them being unlawfully deprived of their liberty upon the barkentine Arago under the provisions and operations of the said sections.

11th. The court should have discharged the petitioners as, notwithstanding they may have signed a contract to perform services at a previous date, to compel services thereunder would be in violation of Section 1 of Article XIII of the amendments to the Constitution of the United States.

12th. The court should have discharged the petitioners, notwithstanding they may have previously signed a contract to serve, as Section 1 of Article XIII of the amendments to the Constitution of the United States gave them the right to leave such service at any time; and in so far as the first subdivision of Section 4596 of the Revised Statutes of the United States attempts to prohibit that right by imposing criminal prosecution and imprisonment, the same is contrary to the provisions of said Section 1 of Article XIII of said amendments, and void.

13th. The court should have discharged the petitioners as being on board the barkentine Arago against their will, and having been placed there in violation of the foregoing provisions of the United States Constitution and the amendments thereto, and their constitutional rights being to that extent invaded, they could not be held to service thereon or to the performance of any duty.

BRIEF.

The first question confronting us is whether upon a petition for habeas corpus the court is at liberty to consider the evidence submitted before the committing magistrate. Section 761, R. S. U. S., provides—

> "That the court . . . shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments and thereupon to dispose of the party as law and justice requires."

Under a New York statute giving the court power to examine into facts contained in the *return* "and into the cause of confinement and restraint of such party" it was held in The People *vs.* Tompkins, 1 Park. C. C., p. 235, that the evidence before the committing magistrate may be inquired into. So also in People *vs.* Bugler, 3 Park. C. C., p. 322.

The purpose of such inquiry, which inquiry is held to be permissible by the common law (Note in 3 Hill, p. 367),

is not to determine whether the prisoner is probably guilty of an offense, but to discover whether there was any evidence at all upon which the magistrate might have reached the conclusion that the accused should be held. It has been considered in the cases referred to, and in others to be cited, that the functions of the court issuing the writ should be confined to an investigation of the jurisdictional fact whether a possible offense had been committed, and not to substitute the judgment of the reviewing court for the conclusion of the committing magistrate.

The courts of the United States have considered the matter from a like point of view. Thus in ex parte Bollman, 4 Cranch, U. S., p. 114, Chief Justice Marshall said that the Supreme Court had examined the evidence upon which the commitment was founded. So In re Kain, 14 Howard, 115, it was held that there was sufficient evidence before the commissioner to justify his holding the prisoner for extradition. Justice Nelson thought (page 148) that the writ should issue because there was not competent evidence before the commissioner, the majority and minority of the court differing as to the conclusion to be drawn from the facts before them, but all agreeing as to their power to examine into the evidence.

So In re Adutt, 55 Federal Reporter, 376, it is held—

> "That this court can only inquire as to the jurisdiction of the commissioner over the subject matter, and as to whether there was legal evidence before him supporting his judgment."

The same opinion was maintained in the recent case of Ornelas *vs.* Ruiz, 161 U. S., page 502, wherein it is stated that—

> "It is enough if it appear that there was legal evidence on which the commissioner might properly conclude that the accused had committed offense within the treaty as charged."

The obvious conclusion is that in the absence of any evidence justifying the holding of the accused for trial they must be discharged. Applying this rule to the facts before the court we submit that, *e converso*, the committing magistrate erred in holding the petitioners, the evidence showing absolutely no offense, and that the district court erred in not discharging them upon a writ of habeas corpus.

II.

Was there Evidence upon which to Hold Petitioners?

We submit that from the record it appears that no constitutional offense had been committed. We might concede that the prisoners violated the terms of their contract in leaving the service of their ship and electing to consider the contract at an end and refusing to return; that, by Section 4598 of the R. S. U. S., this is an offense of some nature, provided such section be constitutional.

By the Thirteenth Amendment of the Constitution of the United States—

> "Neither voluntary nor involuntary servitude, except as a punishment for crime, whereof the parties shall have been duly tried and convicted, shall exist within the United States or in places subject to its jurisdiction."

We insist that the effect of Section 4598 is to create involuntary servitude. Its purpose is to enforce the specific performance of the contract by imprisonment. That this constitutes involuntary servitude we submit, and that therefore the prisoners must be discharged as having committed no crime, we think is fully shown from the following citations:

Matter of Turner, 1 Abbott U. S. Reports, 84.
Ford *vs.* Jermon, 6 Philadelphia Reports, 6.

Clark's Case, 12 American Decisions, 213.
Slaughter House Cases, 16 Wallace, pages 69–72.
Hamlin *vs.* Dinneford, 2 Edwards' Chancery Rep. 529.
Haight *vs.* Radgely, 15 Barbour, 501.
Richmond *vs.* Dubuque, 33 Iowa, 422.
Cooper *vs.* Pena, 21 California Reports, 411.
Pomeroy on Contracts, Section 310.

III.

Section 4598 is unconstitutional in this, it undertakes to confer judicial powers upon a State court. The Constitution provides that:

> "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish"
>
> Sec. 1, Art. III.

An attempt to vest judicial power in a State court is unconstitutional.

Morton *vs.* Hunter, 1 Wheat. 330.
Houston *vs.* Moore, 5 Wheat. 24.
Story Const., Secs. 1501–1503.
U. S. *vs.* Lathrop, 17 John. (N. Y.) 4.

State courts have generally declined to accept powers so conferred:

Ely *vs.* Peck, 7 Conn. 239.
In re Jos. Almeida, 12 Niles' Register, 115, 223.
U. S. *vs.* Campbell, 6 Hall's L. J. 113.
Ex parte Knowles, 5 Cal. 300.
Commonwealth *vs.* Feely, Va. Cases, 321.

And aside from the direct provision of the United States Constitution the reason for this is obvious. The State judges owe no special obligation by virtue of their offices to enforce the State laws.

The sections under discussion undertake to confer judicial power upon State officials, and are therefore unconstitutional, and all acts thereunder are void.

IV.

We submit that the presence of the petitioners on the Arago when they refused to "turn to" was not due to their contract, but to the force exercised by the master, under the authority of the justice of the peace. They could therefore commit no crime in refusing to work, and they must therefore be discharged from custody.

Respectfully submitted.

JAMES G. MAGUIRE,
JACKSON H. RALSTON,
Petitioners' Attorneys.

H. W. HUTTON,
Of Counsel.

165-275

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165-275

Supreme Court of the United States.

OCTOBER TERM, 1896.

ROBERT ROBERTSON, P. H. OLSEN, JOHN Bradley, and Morris Hansen, appellants,
v.
THE UNITED STATES AND BARRY BALDWIN individually, and as marshal of the United States in and for the northern district of California. } No. 334.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

This is an appeal from the judgment of the district court of the United States for the northern district of California, rendered August 5, 1895, dismissing a writ of habeas corpus, issued on the 22d of July, 1895, on a petition signed by Andrew Furuseth, but purporting to be the petition of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen. (Rec., 4–5.)

The matters—thirteen in number—assigned as errors in the judgment of the court are set forth in assignments (Rec., 2–3.)

Before, however, considering these grounds, it may be well to inquire by what authority this court is called upon to review them. The act of March 3, 1891 (26 Stat., 826, sec. 5), prescribes the cases in which appeals or writs of error may be taken from the district court direct to the Supreme court; and among the cases enumerated, there does not appear in general or specific terms the case of a proceeding on habeas corpus. Indeed, in the case of *Lau ow Bew* v. *United States* (144 U. S., 58), which came up on writ of certiorari, for a review of a judgment of the circuit court of appeals, affirming the judgment of a circuit court of the United States in a case of habeas corpus, Mr. Chief Justice Fuller, speaking for the court, said:

> The case before us is one of habeas corpus. The jurisdiction of the circuit court was not in issue, nor was the construction or application of the Constitution of the United States involved, nor the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority drawn in question. It did not fall within either of the classes of cases which may be brought directly to this court under the act, and was therefore properly carried to the circuit court of appeals.

It is true that each of the thirteen alleged errors assigned here appear to involve the construction or application of the Constitution of the United States and to

draw in question the constitutionality of the act of Congress. But the allegations are of that vague, general, and indefinite character which this court in *Kohl* v. *Lehlback* (160 U. S., 296) characterized as "averments of mere conclusions of law and not matters of fact," and strongly condemned in *Whitten* v. *Tomlinson* (160 U. S., 242).

Again, the petition in this case, as has been already indicated, is not signed by the alleged petitioners at all, nor sworn to by them or either of them, nor in any way authenticated as their act, or authorized by them. It is signed and sworn to by one Andrew Furuseth "on behalf of said Robertson," etc.

Section 754, Revised Statutes, provides:

> Application for writ of habeas corpus shall be made to the court or justice or judge authorized to issue the same by complaint in writing, *signed by the person for whose relief it is intended*, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified *by the oath of the person making the application.*

Now, the petition here was not "signed by the person for whose relief it was intended."

It was not "verified by the person making the application," unless, indeed, Mr. Andrew Furuseth be regarded as the person making the application, in which case the petition should have been by him as petitioner and the cause should have proceeded and stand now in this court in his name.

so far as it is disclosed in this record by averment, implication, or conjecture, appears to be as follows: Robertson, Olsen, Bradley, and Hansen had shipped on board the American barkentine *Arago* at San Francisco for a voyage to Knappton, State of Washington, and thence to Valparaiso, and thence to such other foreign ports as the master might direct, to return to a port of discharge in the United States; that they had each signed a contract called "shipping articles" to perform the duties of seamen during the course of the voyage; that they deserted the ship at Astoria, were arrested, and again placed on board the ship, and that upon the high seas they committed an offense in refusing to obey the orders of the captain of the vessel; that they were brought to San Francisco, and that the voyage which they had contracted to perform was not completed to the foreign port.

That on the 11th day of July, 1895, a warrant of commitment was issued by E. H. Heacock, commissioner United States district court, northern district of California, directed to the marshal of the United States for the northern district of California, reciting that on that day an order had been made by the said United States commissioner that the said Robertson, Olsen, Bradley, and Hansen be held to answer upon a charge of willful disobedience of the lawful command of the master of the American barkentine *Arago*, they being seamen who had been lawfully engaged as such on board said barkentine, and that such offense was committed on board said vessel while on the high seas on the 30th day of June, 1895,

and commanding said marshal to receive the men into his custody and detain them until legally discharged. That the warrant was received by the marshal on the 11th of July, 1895, and was executed by him on that day, by placing the men named in the San Francisco county jail.

That the petition for the writ of habeas corpus appears to have been subscribed and sworn to on the 18th of July, 1895, and to have been filed on July 23, 1895, on which last date the writ was awarded and on the same day issued directing the marshal of the northern district of California to produce the body of the "person" (sic) before the judge of the district court on the 25th of July, 1895, at 11 o'clock a. m., at which time and place the marshal made return (Rec., 7 and 8), to which return the petitioners, by counsel, filed their answer (Rec., p. 9).

On the hearing, Mr. E. A. Heacock, the United States commissioner who issued the warrant, was called and examined in behalf of the petitioners. From his testimony (Rec., 10–14) it appeared that the original complaint had been heard by him on the 10th of July, 1895; that the "shipping articles" under which these men had contracted as seamen (Rec., 10), the log book of the vessel (Rec., 14), and the testimony of the parties themselves (Rec., 10) were all produced before and heard and considered by him as United States commissioner sitting in that case.

That on August 5, 1895, an order was entered by the court dismissing the writ of habeas corpus theretofore awarded and remanding the prisoners to the custody of the United States marshal.

The ground upon which the court dismissed the writ and remanded the prisoners does not appear. It may have been because of the vagueness and insufficiency of the petition, because the same was not authenticated or verified as required by the statute, or it may have been because the court, being satisfied that the original case was one clearly within the jurisdiction of the United States commissioner, the rightfulness or the wrongfulness of his decision and action thereon could not be inquired into or reviewed under a proceeding of habeas corpus.

The assignments of error need not be considered in detail or in the order in which they are presented. They suggest legal questions which are striking and conspicuous for their novelty, and perhaps originality.

For example, that although the petitioners had regularly engaged under shipping articles to perform the duties of seamen throughout the period and extent of a prescribed voyage, yet they could not be held to the performance of their contracts, because such a course would be in violation of section 1, Article XIII, Constitution of the United States, which prohibits "slavery and involuntary servitude."

If that view prevails, the enlisted soldier in the Army or seaman in the Navy can at any moment demand their release from the service, because their enforced continuance therein would be an "involuntary servitude."

That they were deprived of their liberty upon the barkentine "without due process of law," contrary to

the provisions of Article V, Constitution of the United States.

As Article V relates to the manner of making amendments to the Constitution its application to the present case is not perceived.

That sections 4598 and 4599, Revised Statutes, are "unreasonable, oppressive, and arbitrary," in this—that they attempt to confer judicial power upon a State officer contrary to section 1, Article III, Constitution of the United States.

As this record does not disclose—at least to our view—the intervention of a State officer at any stage of the proceedings recited, we are unable to perceive the application of the article cited.

But in case there should be some esoteric meaning or construction placed upon the law or the facts hidden from the sight of mere ordinary mortals, it may be prudent to remind the court that in *Prigg* v. *The Commonwealth of Pennsylvania* (16 Pet., 539), in a proper case, it said:

> As to the authority so conferred upon State magistrates, while a difference of opinion has existed and may still exist on the point, in different States, whether State magistrates are bound to act under it, none is entertained by this court that State magistrates may, if they choose, exercise that authority, unless prohibited by State legislation.

And that the thirty-third section of the judiciary act of 1789, which empowered State officers to arrest and commit persons charged with a violation of the criminal laws of the United States, was held by the supreme court

of Alabama, in 1855, to be constitutional, in an opinion which must commend itself for its clearness, conciseness, and force. (*Ex parte Gist*, 26 Ala., 156.)

And section 1014 of the Revised Statutes gives countenance to this view in language which is exceedingly broad.

Kurtz v. *Moffitt*, 115 U. S., 494.

That section 4598, Revised Statutes, is unconstitutional upon the further ground that it "deprives a person proceeded against thereunder of the right to a trial by jury, etc.," and of many other valuable privileges therein referred to.

If it does, it is very iniquitous and improper. But that consideration alone is not sufficient to justify this court in declaring it unconstitutional in the absence of a *case* which directly raises the question and presents by proper procedure the rights of a citizen which have been violated by this wrongful enactment.

Certainly no such case is presented in this record. It does not appear here that anybody—not even Mr. Andrew Furuseth—has demanded or prayed for a jury of his country and has been denied. It does not appear that any question was at any time raised by any party as to the right or propriety of having the matters of fact ascertained by a jury. Indeed, the court which heard and passed upon the application for the writ of habeas corpus and the proceedings had thereon and thereafter had nothing to do with any other fact than the single one of the jurisdiction of the United States commissioner over

the subject-matter and the parties that were brought before him.

In re Byron, 18 F. R., 722.
In re Wight, 134 U. S., 136.
Waring et al. v. *Clark*, 5 How., 459.

The writ of habeas corpus can not be converted into a remedy for the correction of mere errors of judgment or procedure of a court having cognizance of the criminal offense.

Ex parte Frederich, 149 U. S., 70.
Re Savin, 131 U. S., 267.
Re Swan, 150 U. S., 637.
Re Cuddy, 131 U. S., 280.
Cortes v. *Jacobus*, 136 U. S., 330.
Whilten v. *Tomlinson*, 160 U. S., 231.
In re Belt, 159 U. S., 95.
In re Chapman, 156 U. S., 215.

The alleged errors assigned proceed generally upon the notion that one being *sui juris* who solemnly and duly contracts to yield to another, whether to a natural or an artificial person, his time, powers, capacities, and faculties, for a fixed period of time, has yet the right, under the express provisions of the Federal Constitution, to repudiate his contract at any time; to recall the grant which he has made and resume absolute and unlimited control over the subjects which he had granted. As already suggested, if this view be sound, it will at once derange, disintegrate, and disrupt all political and social organization. There can be no army or navy or efficient civil service, for each individual may at any moment that caprice or self-interest suggests, abandon the service in

which he had enlisted and withdraw the support upon which society or government had reckoned for its efficiency or its existence.

In *In re Grimley*, 147, and *In re Morrissey*, 157, vol. 137, U. S., applications were made for writs of habeas corpus of enlisted soldiers, on the ground that they were infants, not *sui juris* when their contracts of enlistment were made.

In these cases Mr. Justice Brewer said (p. 151):

> But in this transaction something more is involved than the making of a contract whose breach exposes to an action for damages. Enlistment is a contract, *but it is one of those contracts which changes the status, and where that is changed, no breach of contract destroys the new status, or relieves from the obligations which its existence imposes, etc.*

Enlistment in the Army does not more effectually change the status than does the contract under which a seaman binds himself to perform the duties of his calling until the period of his voyage has ended.

As to both soldier and seamen, their status changes; they cease to be independent, separate, and distinct beings, directed and controlled only by their own reason and will, and they each become integers in a distinct and complete autonomy—parts of a machine, the successful and efficient operation of which must depend largely, if not altogether, upon the fact and the manner of their performance of the duty assigned to them. Their will is subordinate to the will of the master; their reason has no broader scope than the field of duty to which,

in the purpose and economy of the machine, they have been assigned.

It is not a question as to whether any court has jurisdiction to enforce by its decree the specific execution of this personal contract, but the question is whether or not he who by this contract has become the master may not by the powers inherent in him compel for his own preservation the discharge of the duties which the soldier or the seaman has bound himself to perform.

Men who enter into such contracts surrender their liberty, and are held, not as the pleader in this case imagines, under any process of law, but are held by the ligaments of their own lawful contracts.

In *Turner's Case* (1 Ware's Rep., 80), the court said:

> It is certainly true that, by the common law, when a man lets himself to hire and neglects or refuses to fulfill his engagement, he can not be compelled to do it by any restraint put upon the freedom of his person. The law gives to the injured party only a remedy by an action for damages, and this is, in the ordinary transactions of life, considered an adequate remedy. But the contract of hire for marine service stands on reasons in many respects peculiar to itself. Though considered as a civil contract, principles are applied to it in some respects bearing a strong analogy to those holding in the military service; and the service is, by the laws of some nations, considered partially at least as a military service.

And in *Brower et al.* v. *The Maiden* (Gilpin's Rep., 294), Judge Hopkinson, in the district court of the United States for the eastern district of Pennsylvania, in a case in which certain seamen, who had abandoned

their vessel, afterwards libeled for their wages, referring to the act of 20th July, 1790, said:

> It was at the option of the master when they left the ship to enter their desertion in the log book, according to the provisions of the fifth section of the act of 20th July, 1790, or to have them committed to prison and detained until the vessel was ready to sail, under the seventh section. He chose the latter. * * * The effect of the second is to continue the contract in force and detain the men in prison in order to compel their performance of it. * * * In truth, even while in prison, the seamen are in the custody of the captain; they are at his disposal and may be taken out at his pleasure; and they are so taken out when the vessel is ready to sail.

There is no difference in this respect between the legislation of 1790 and that of 1872; in both it is recognized that the *status* of the seaman is essentially changed by his contract.

The twelfth assignment of error illustrates, in its plain and undisguised statement, the absurdity of the position assumed by the appellant here.

It is that—

> The court should have discharged the petitioners notwithstanding they may have previously signed the contract to serve, as section one of article thirteen gave them the right *to leave such service at any time;* and in so far as the first subdivision of section 4596, Revised Statutes, attempts to prohibit that right by imposing criminal prosecution and imprisonment, the same is contrary to the provisions of said section one of article thirteen of said amendments and void.

That is, that the enlisted soldier who is a sentinel on the extreme outpost in time of war, the enlisted seaman who is on the "look out," or the night watch, the articled mariner at the compass or the helm, may, each and all of them, at any time, however critical or exigent the occasion, abandon his post or station, having changed his mind as to the length of his service, and thereby expose to peril, it may be to destruction, those whose safety has depended alone upon his vigilance or his care, and receive immunity from every penalty on the defense here suggested, that after his change of mental purpose occurred his further detention in the service would be an "involuntary servitude" within the meaning of this much-abused constitutional amendment.

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165-273

165-275.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 334.

ROBERT ROBERTSON ET AL., APPELLANTS,

vs.

BARRY BALDWIN ET AL., RESPONDENTS.

Appeal from the District Court for the Northern District of California.

Petition for Rehearing and Recall of Mandate.

JAMES G. MAGUIRE,
JACKSON H. RALSTON,
Attorneys for Appellants.

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Petition for Rehearing and Recall of Mandate.

The appellants in the above-entitled cause respectfully petition the court for a rehearing thereof, and for a recall of the mandate issued upon the judgment and decision of the court therein, and in support of their petition respectfully represent to the court as follows:

I.

That the decision of the court affirming the judgment of the district court for the northern district of California was rendered and based principally upon a construction of the Thirteenth Amendment to the Constitution of the United States, and particularly upon a definition of the term "involuntary servitude," as used in said amendment, although neither the construction of said Thirteenth Amendment nor

the meaning or definition of the term "involuntary servitude," as used therein, was discussed or argued by the attorneys or counsel for either appellants or respondents in this court or in the court below. The question discussed, in this behalf, being: Whether or not the necessities of the case of the seaman excluded him from the protection of that amendment.

II.

That the construction given to the Thirteenth Amendment to the Constitution of the United States, and particularly to the term "involuntary servitude," as used therein, in the decision rendered by the court, is of great importance to the people of the United States, generally, and very materially affects the liberties and rights, not only of these appellants, but also of great numbers of such citizens other than appellants; and appellants are advised by their counsel, and verily believe, that, upon a rehearing and full argument upon the specific questions involved in the construction of said Thirteenth Amendment, and particularly of the term "involuntary servitude," as used therein, a very strong showing and argument can be made in support of a construction more favorable to Liberty and to the rights of these appellants, and strongly tending to support and sustain their appeal herein from the judgment of the district court of the northern district of California.

III.

That the decision of the court in this case should be reheard, upon more full argument by counsel, upon the questions involved therein, particularly the question of the construction and meaning of the said Thirteenth Amendment to the Constitution of the United States and of the term "involuntary servitude" as used therein; because the effect of the decision as rendered is to re-establish a condition of legal servitude among citizens of the United States,

which it was the intention of the people of the United States to prohibit and make unlawful by the adoption of said Thirteenth Amendment, and entirely defeats and renders of no effect the term "involuntary servitude," which was added to the term "slavery" in said Amendment for the express purpose of making it impossible to establish in this country a condition of contractual slavery, differing from chattel slavery only in the fact that it is presumably voluntary at its inception, because evidenced by a contract signed by the party held to service. In this behalf your petitioners submit that if the term "involuntary servitude," as used in said Thirteenth Amendment does not prohibit or prevent the enforcement of personal servitude, against the will of the party held to service, in cases where such service was at its inception voluntarily undertaken, then said Thirteenth Amendment affords no further protection or guarantee of liberty by reason of the use of the term "involuntary servitude" therein than would have been secured and guaranteed had said term been omitted from said section; because a servitude enforced upon a person without his contract is slavery, and all such cases of servitude are included in the term "slavery;" whereas a servitude voluntary at its inception becomes involuntary whenever the person held to service is no longer willing to be bound to such service. In this behalf petitioners further submit that as the construction given to said Thirteenth Amendment by the court, in its decision in this case, cannot be free from doubt, that every doubt concerning the true interpretation of a statute, should, under the universal rule of English, as well as of American jurisprudence, be resolved most favorably to the liberty of the citizen, whereas, in its decision in this case, the court has apparently resolved the doubt against the liberty of the citizen.

IV.

If the construction given by the court to the said Thirteenth Amendment be adhered to, there is great danger that designing persons, not sufficiently regarding the sacred right of their fellow-citizens to liberty and the pursuit of happiness, may take advantage of their pecuniary distresses and difficulties to reduce them to a condition of slavery under the form of contracts to labor, and in this behalf it is matter of common knowledge that thousands of impoverished citizens, at all times, and millions of citizens in periods of industrial depression, being landless and, therefore, without means of independent self-support, can be readily induced, by reason of their helplessness and the overwhelming pressure of their inability otherwise to procure the common necessaries of life, to sign away their liberties, either for life or for fixed terms, precisely as these appellants, under pressure of that very privation, were obliged to enter into the contract for servitude, the rigors and unendurable hardships of which they sought to escape by fleeing from the immediate control of their masters to the soil of the free State of Oregon. Indeed, it is alarming to contemplate the extent to which contractual slavery may be forced upon the landless laborers of this country, white, as well as black, by a mere concert of action, prompted by the plainest inducements of self-interest, on the part of employers, to exclude such landless, and, therefore, helpless and dependent, laborers from employment until they shall be compelled by their privations to sign such contracts for personal servitude as will bind them for life or for long terms to the control and dominion of individual masters.

V.

That the questions determined by the decision of the court on this appeal, and particularly the construction given to the said Thirteenth Amendment and to the term "invol-

untary servitude" as used therein should be again heard and considered upon a more full and complete argument of the specific questions of the meaning of said amendment and of the said term "involuntary servitude" used therein, because the decision as rendered revives and restores all of the odious conditions and practices established by Subdivision 3, of Section 2, of Article IV, of the Constitution of the United States, and supported, upheld, and enforced by the fugitive slave law and by the decisions of the United States Supreme Court in the cases of Dred Scott *vs.* Sanford, 19 Howard, 393; Ableman *vs.* Booth, and Booth *vs.* United States, 21 Howard, 506; Moore *vs.* The People of Illinois, 14 Howard, 13; Strader *vs.* Graham, 10 Howard, 82; Jones *vs.* Vansant, 5 Howard, 215; and Prigg *vs.* The Commonwealth of Pennsylvania, 16 Peters, 539; all of which were for more than thirty years believed by the people of the United States to have been overturned and made of no further effect by the adoption of the said Thirteenth Amendment to the Constitution of the United States. The only difference between the rule in the cases above cited and the rule laid down in this case being that slavery, *i. e.*, servitude not voluntary at its inception, cannot be enforced.

Analogy to Fugitive Slave Laws.

Subdivision 3, of Section 2, Article IV, of the Constitution of the United States, reads as follows:

> "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The Fugitive Slave Law merely provided for carrying that provision of the Constitution of the United States into effect. The cases cited, including the Dred Scott Case, merely upheld the plain meaning of that provision of the

Constitution, and held the laws passed for the purpose of giving it effect to be constitutional, and also held, particularly in the case of Prigg *vs.* The Commonwealth of Pennsylvania, 16 Peters, 539, that the enforcement of the rights of masters to "persons held to service or labor in one State under the laws thereof, escaping to another" might be devolved by Federal laws upon judges, justices, and other officers of the State in which such escaping person might be found. These appellants, in the case under consideration, were persons held to service and labor under contracts made in the State of California, escaping from the immediate custody of their masters into the State of Oregon, and they were seized in the State of Oregon under the authority of Federal laws by State officers, adjudged to be bound to personal service to individual masters under their contracts, notwithstanding that they were unwilling to be held to such service, and that they would not voluntarily continue in such service, and that they could be compelled to continue in such service only by the coercion of their several wills and by force sufficient to overcome their volition, and they were so delivered up by the officers of the State of Oregon on claim of the party to whom their service and labor were nominally due under the terms of the contract. The Dred Scott Case, which it was certainly the fixed purpose and intention of the people of the United States to overrule and nullify by the adoption of the Thirteenth Amendment to the Constitution of the United States, went no further than the decision in this case goes, save and except that in the Dred Scott decision it was held that such holding to service or labor might be originally imposed upon the party held thereto without his assent at the inception thereof.

The great popular agitation against slavery, which led to the determination on the part of the people that it must be abolished in the United States, and the efforts for the abolition of which led to the War of the Rebellion, was an oppo-

sition to permitting in this country any private citizen to compel another citizen to serve him contrary to the will of the party held to service, no matter how the servitude originated. It was not merely an opposition to the chattel slavery of the negro, but to every form of slavery and involuntary servitude imposed either upon the black man or upon the white man, by which one might be compelled against his present will to render personal service to another, or to be pursued by another from State to State and seized and delivered up to a master upon the claim that personal service was due to such master. The people in adopting the Thirteenth Amendment certainly did not have in mind any limitations upon the term "involuntary servitude," but understood it according to its generally accepted meaning as any servitude enforced by one man upon another against the present will of the latter.

It must be apparent, too, that if the said Thirteenth Amendment does not prohibit the enforcement of contracts for personal service against the will of the party held to such service, existing social and industrial conditions must in time make such contracts as universal, if not more universal than chattel slavery was before the War of the Rebellion, giving rise to vested interests under such contracts far beyond the interests that were vested in chattel slavery, for the helpless condition of the servient class will enable employers to procure contracts for service that will be very valuable to them in the same proportion in which they are oppressive to the people bound by them.

It is certain that the people of this country will not be more tolerant to that kind of contractual slavery than they were to the chattel slavery of the South, and the question must finally, and perhaps speedily, arise as to whether the people of the United States shall be taxed to pay for the freedom of citizens bound to servitude under such contracts, or whether legislation shall be enacted to destroy all vested rights in human flesh and blood, without compensation, as

was done in the case of chattel slavery. In view of the evident and serious possibilities thus involved to our country and to our people generally, in common with appellants, in the determination of the meaning and scope of the said Thirteenth Amendment, we submit that a rehearing should be granted, and a more full and complete argument of this specific question be heard and considered by the court before making the final limitation upon the scope and meaning of said Thirteenth Amendment involved in the decision rendered in this case.

VI.

Your petitioners respectfully submit that the construction given to the said Thirteenth Amendment, and particularly to the term "involuntary servitude" as used therein, is erroneous.

What is Involuntary Servitude?

The language of the Thirteenth Amendment is:

> "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

We submit that the term "involuntary servitude" as used in that amendment can have but one meaning, viz., a servitude enforced against the present will of the servant. To nullify or limit that meaning in any way necessarily deprives the term of any effect or purpose whatever, as used in the Amendment.

The qualifying adjective "involuntary" necessarily attaches to the word servitude, as used in that Amendment, continuously, except in the single case excluded by the terms of the Amendment itself from its operation, viz., where the

servitude is imposed as a punishment for crime, after due conviction.

It seems to us that the fundamental mistake in the prevailing opinion of the court is the assumption that the Thirteenth Amendment was intended to be, or is, a limitation upon the powers of the Government, or upon the relations of the Government to its citizens, as well as a limitation upon the relations that may exist between private citizens.

The Thirteenth Amendment has no application whatever to the relation that may exist between the Government and its citizens, but is an inhibition of slavery and involuntary servitude as between citizens, absolutely prohibiting any citizen or any person in the United States from holding another either to slavery or to involuntary servitude, and in its application it is not restricted to any classes of citizens nor to any occupations or industries, but includes all citizens and all employments in which men may be held to service, under contract or otherwise. To hold that the term "involuntary servitude" does not apply to servitude originating in a contract, voluntarily made, is to destroy the whole meaning and purpose of the term as used in the Amendment, because servitude, involuntary at its inception, is slavery. Slavery is a servitude imposed upon a man against his will. If then no servitude is to be regarded as involuntary, under the terms of the Amendment, except such as was involuntary at its inception, the term "involuntary servitude" in the Amendment is superfluous, because the term slavery covers all such cases.

The exception to the inhibition of involuntary servitude in the proviso that such servitude may be enforced as a punishment for crime, after conviction, does not suggest that the amendment was intended in any way to limit the rights of Government in its relations to its citizens. That exception does not relate to the imprisonment of citizens convicted of

crime, nor to the right of the Government to compel persons convicted of crime to perform hard labor during such imprisonment, but was intended to except from the otherwise unqualified limitation upon the right of any person to hold another to involuntary servitude, cases in which, under the laws of several of the States, persons convicted of crime and sentenced to imprisonment at hard labor, may be compelled to perform such labor for private citizens contracting with the State for the service of such prisoners. It was intended solely to exempt from the general terms of the Amendment the farming out of convict labor to private contractors.

As the Amendment is a limitation upon the relations of private citizens only, and not in any sense a limitation upon the relations of the Government to its citizens, the argument that the construction of the term "involuntary servitude," for which we contend, would entitle a soldier to desert his regiment on the eve of battle has no foundation, because the Amendment does not, and does not purport to, affect the relations between the Government and its citizens, whether they be soldiers or not. The Thirteenth Amendment, then, being a limitation upon private rights and private powers merely, the construction of the term "involuntary servitude" is relieved of the embarrassing consequences that would result to the Government of the United States or to the goverment of any of the States, by depriving such Government of the power to compel the service of its enlisted soldiers or sailors, or, in cases of extreme danger, to compel the service of all its citizens.

Arguments from Inconvenience and Necessity.

The argument in favor of the position that servitude under a contract voluntarily made can never become legally involuntary under the terms of the Thirteenth Amendment, is, that a contrary construction would be destructive of the merchant marine service, because in that

service it is necessary that sailors be bound to serve upon the ships to which they are articled, for the voyage or other term for which they contract, and that in this respect the merchant marine service is and ever has been essentially different from all other private employments.

We cannot concede that even the truth of that assumption would justify or permit a construction denying the protection to American sailors that is guaranteed to all citizens by any provision of the Constitution. But the assumption is without foundation.

Whatever may have been the condition with respect to the manning of vessels in foreign ports in earlier periods, when the citizens of one nation would not or could not accept service in the merchant marine of another, it would be idle here to discuss. The truth is that at the present time no such necessity exists, because seamen of all nations serve indiscriminately in the merchant vessels of all nations. In this respect the sailor is to-day a citizen of the world. Whatever may be his nationality, or the nation to which he owes allegiance in the strict sense of citizenship, under the laws of all maritime nations the seaman is entitled to the protection of the flag under which he sails, regardless of his citizenship. It is, therefore, quite immaterial to him to what nationality the ship in which he sails may belong, or in what vessels he may ship in the ports of foreign nations. The only important questions with him are, the seaworthiness of the ship and the character of the master. An American vessel can secure a crew in Liverpool, or Antwerp, or Genoa, or Singapore, or Yokahama, as readily as can the ships of any of the nations in which these ports are situated, and as readily as in the port of New York. In fact, the practice of ship owners and masters of the American Merchant Marine, for the last thirty years and over has been not to continue their crews in employment or service while in foreign ports awaiting cargoes. The uniform practice has been to discharge

or otherwise get rid of their crews in such foreign ports to save the expense and annoyance of keeping them on or about the ship while lying, for the ordinary periods of detention, for freight in foreign ports. In recognition of this universal practice, carried out unlawfully before that time, Congress in 1884 passed an act authorizing masters and sailors by agreement to cancel the sailing contracts or articles. Before that time sailors deserted the vessels in foreign ports, generally under compulsion of treatment intended to induce or compel them to desert; and since the passage of the act, in nearly all cases, the crews of American vessels have been discharged by agreement between the masters and the sailors, under the terms of the act, in the foreign ports. The facility with which American vessels can secure crews in foreign ports makes it not only unnecessary but unbusinesslike to retain the crews while lying for considerable periods in foreign ports. This change of conditions in the merchant marine service of the various countries, and this uniform practice, contrary to the law, led to the passage of the laws now securing the rights of sailors and of masters and owners in the cancellation of sailing articles.

The other example of hardship and injustice cited in the prevailing opinion, in support of the position that the inhibition of involuntary servitude cannot apply to service in the merchant marine, under articles, is the case of the sailor deserting his ship between ports or even in a storm at sea. That is an extreme case, in which the lives of other men or the property of others or both would be jeopardized or destroyed as an immediate consequence of the sailor's refusal to perform his part in the common hazard and purpose undertaken by him with the others, on the faith of which other men and the property of other men went into the danger. We contend that he is not, even in that extreme case, bound to continued servitude under his contract, but he is bound not to desert other men in a danger into which he has led them, or into which he and they have gone, mutually rely-

ing upon each other. He must remain with them until the danger has passed, until they are in a position of safety, then and not until then does the question of his servitude under his contract arise, and then if he is not willing further to serve under his contract he cannot, and should not, be compelled so to do involuntarily.

The case cited by the court is analogous to the case of two men engaged in digging a well, and after sinking to a considerable depth the man at the windlass decides that the work is beyond his strength or hopelessly unprofitable, and determines that he will not further pursue it. He has a perfect right to notify his colaborer that he will not proceed further with the sinking of the well and he has a right to terminate his obligation to his employer in that behalf, but if his fellow-laborer is at the bottom of the well and the determination not to work further under the contract comes upon him while he is hoisting a bucket of earth, he cannot let go of the windlass and allow the bucket of earth to fall on his colaborer. He is bound to either hoist the bucket of earth to the surface or to lower it safely to the bottom of the well, not because his contract cannot be terminated when the bucket is half way up in the well, but because to let go of the windlass at that moment would cause the death or severe injury of his colaborer through his willful wrong, and he would in that case be held criminally and civilly liable; not under his contract with his employer for service, but because of his wrongful act against his colaborer. Neither would he have a right, after hoisting the bucket of earth from the well, to go away and leave his colaborer at the bottom of the well. He is bound, not by his contract for service, but by his duty to his colaborer, who has taken the risk of the employment and placed himself at the bottom of the well upon the faith that the man at the windlass would not inflict injury upon him, nor abandon him while in danger, but would restore him to a position of safety before actually abandoning his work.

Upon this he has a right to rely independently of the contract of his colaborer and although he be not a party to such contract.

So a teacher of the art of swimming may at any time determine that he will not further teach his pupil, but if he reaches the determination while he has his helpless pupil in deep water, he is bound to take him back to a place of safety, not because he is bound by his contract to work further for his pupil, but because of his duty, regardless of his contract, not to leave a fellow-being to perish in a position of danger into which he had led him and from which he could have extricated him safely.

But, assuming that the merchant marine service would be impaired or crippled by enforcing the terms of the Constitution, as the sovereign people, through their regularly constituted State legislatures, have written it, this hardship or inconvenience can be corrected only by an amendment to the Constitution regularly adopted.

The courts have no jurisdiction to change a letter, nor to modify a term, of this supreme law of the land, in order to meet any condition of inconvenience or necessity which, to them, may seem likely to result from its enforcement. The prevailing opinion in this case seems to rest the decision of the court upon considerations of necessity and expediency, against the letter of the Constitution. Indeed the very appeal to the arguments of hardship and necessity is an admission that, but for those arguments, a contrary construction must be given to the constitutional provision in question. Clearly any consideration of hardship or necessity would be irrelevant and immaterial to an interpretation of the provision in question, if, independently of that consideration, the true interpretation of the provision would avoid the hardship or meet the necessity.

The provisions of the Thirteenth Amendment, in question are favorable to the rights of man, and particularly to the individual liberty of all American citizens, regardless

of classes and of occupations while the modification of the meaning and effect of the amendment, involved in the decision of the court in this case, is to break down those safeguards of human liberty upon the ground that their maintenance and enforcement would interfere with the success of the American Merchant Marine.

We submit that the people, and not the courts, must deal with that question and that the courts must, in all cases, enforce the Constitution as it is written, without regard to consequences.

Where the meaning of any provision of the Constitution is ambiguous, or otherwise uncertain, the courts must resolve doubts thus arising out of the language of the provision, and in such cases all doubts arising must be resolved in favor of human liberty. Doubts as to the meaning of a constitutional provision can never, properly, arise out of the consideration of extraneous facts or assumptions of fact.

In consideration of the foregoing propositions of law and fact which we feel can be fully supported and established on a rehearing, your petitioners respectfully pray that a rehearing be granted, and that the mandate, heretofore issued to the United States District Court of the Northern District of California be recalled.

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Attorneys for Appellants.

CERTIFICATE.

We hereby certify that in our opinion the foregoing motion for rehearing and recall of mandate is well-founded in law.

JAMES G. MAGUIRE,
JACKSON H. RALSTON,
Attorneys for Appellants.